to show that the appeal is 'brought' when the notice of appeal is served on the respondent."

To my mind that case is fully in point and I have no hesitation in following it in the construction of our own rule 15.

If the matter stood there, that would be the end of it. It is not, however, quite the end of it because an argument has been based upon certain subsequent proceedings. What happened was that on 10th May, that is as soon as the matter came to their notice, the respondents' solicitors sent a notice to the appellant's solicitors the receipt of which is admitted. It is headed "Notice Of Preliminary Objection", and it reads :—

"TAKE NOTICE that at the hearing of this appeal at the sitting of the Court of Appeal at Kuala Lumpur which commences on Monday, the 20th day of August, 1962, we shall apply for this appeal to be dismissed on the grounds that we were not served with notice of appeal within the time limited for appeal whereby the appellant is in breach of Order 58 rule 1A(1), Order 58 rule 2 and Order 58 rule 15."

When I refer to the printed list of Court of Appeal sittings signed by the Registrar which is a reproduction of what appeared in the Government Gazette I observe that the first scheduled sitting of the Court of Appeal after 10th May is 20th August, that is to-day.

Thereafter, whether advisedly or not, no steps were taken by the appellant to obtain special leave but in the meantime the respondents' solicitors took the precaution of asking security for costs which they failed to obtain.

For myself I can see here no grounds for saying the respondents have waived their right to take the present point.

In effect what they have said is this. We have given you notice that when the appeal comes on for hearing we shall argue that, irrespective of its merits, it has not been properly brought in time and so should be struck out. But in case we should fail and have to fight the appeal on its merits then we ask for security for costs.

In my view the preliminary objection must succeed and the appeal should be struck out with costs to the respondents.

Before departing from the case I should observe that the procedure followed by the respondents, that is to say giving the other side notice at the earliest possible moment and then dealing with the matter when the appeal comes on for hearing seems to be the course that was followed and certainly not disapproved of in the case of *In re Helsby.*(2)

Appeal struck out.

Solicitors: *R. P. S. Rajasooria; Donaldson & Burkinshaw.*

HUP SENG CO. LTD. v. CHIN YIN & ORS.

[O.C.J. (Suffian J.) August 20, 1962]

[K.L. — Civil Suit No. 457 of 1961]

Company Law — Requisition for general meeting under s.115 of the Companies Ordinance — Failure by directors to convene meeting — Meeting called by requisitionists under s.115(3) — Notices of requisitionists' meeting — Failure in notices to comply with Articles of Company — Effect of such failure — Companies Ordinance, 1940, s.115(1), (2) and (3).

Some dissatisfied members of a company registered under the Companies Ordinance served a requisition on the directors under section 115 of the Ordinance to call a general meeting. The draft resolutions to be discussed at the meeting were sent with the requisition. The directors having failed to call a meeting in due time, the requisitionists under the provisions of section 115(3) of the Ordinance proceeded to convene a meeting themselves. In the notices that were sent out by the requisitionists for their meeting, the date, time, place of the meeting were specified and additionally it was stated "the business before the meeting will be to discuss and vote upon the resolutions set out in the notice of requisition." No copy of the notice of requisition accompanied the notices calling a meeting.

In an action by the company for a declaration that the resolutions passed at the subsequent meeting convened by the requisitionists were invalid and of no effect,

Held: the notices calling the meeting failed to comply with Article 61 of the company, in that these notices did not specify the general nature of the business to be transacted at the meeting. This was a fatal flaw to the validity of the meeting and the proceedings of the meeting must be held void and of no effect.

Case referred to:—

(1) *Boschoek Proprietary Co. Ltd.* v. *Fuke* [1906] 1 Ch. 148.

The following cases were also cited in argument: *MacDougall* v. *Gardiner* (1875) 1 Ch. D. 13; *William Irvine* v. *The Union Bank of Australia* (1877) 2 App. Cas. 366; *Imperial Hydrepathic Hotel Co., Blackpool* v. *Hampson* (1883) 23 Ch. D. 1; *Trevor & Anor.* v. *Whitworth & Anor.* (1887) 12 App. Cas. 409; *Browne* v. *La Trinidad* (1888) 37 Ch. D. 1; *Salomon* v. *A. Salomon & Co. Ltd.* [1897] A.C. 22; *Thomson* v. *Henderson's Transvaal Estates Ltd.* [1908] 1 Ch. 765; *Hickman* v. *Kent or Romney Marsh Sheepbreeders' Association* [1915] 1 Ch. 881; *Litvinoff* v. *Kent* (1918) 34 T.L.R. 298; *Short & Anor.* v. *Treasury Commissioners* [1947] 2 All E.R. 298, [1948] 1 K.B. 116; affirmed by H.L. [1948] 2 All E.R. 509, [1948] A.C. 534.

CIVIL SUIT.

M. W. Maxwell (*Yong Joon Hong* with him) for the plaintiff.

T. K. Sen for defendants Nos. 1, 2, 3, 4 & 7.

Defendant No. 5 in person.

Defendant No. 6 since deceased.

Cur. Adv. Vult.

Suffian J.: The sole question here relates to the validity of four resolutions passed at a meeting on 9th July, 1961.

Some hundred or so persons lived on a piece of land, Lot 1995, in the Mukim of Petaling, paying ground rent on their respective plots to the owner, Mrs. Brown. In 1958, desiring to leave the country, she decided to sell the land to the sitting tenants including the trustees of a school existing on the land. We are not concerned here with the one acre on which this school stands. We are only concerned with the

rest of the land totalling 29 acres 0 rood and 15 poles The price agreed for this portion was $58,000 which the tenants clubbed together to find. On 18th April, 1958, an agreement of sale was entered into between on the one hand Mrs. Brown and on the other hand defendants Nos. 1, 3, 6, 7 and another person, presumably on behalf of all the purchasers. This agreement is mentioned in exhibit D.1. On 18th May, 1959, the land was transferred by Mrs. Brown to defendants Nos. 1, 3, 6 and 7, exhibit 1.

On 28th July, 1960, the plaintiff company was incorporated. On 20th October, 1960, the four transferees transferred this land to the plaintiff company, again exhibit P.1.

It is to be noted that the four defendants Nos. 1, 3, 6 and 7 were registered as absolute proprietors and the plaintiff company is also registered as absolute proprietors, not as trustees.

By Article 5 of its Articles of Association the company's original capital was $75,000 divided into 75,000 ordinary shares of $1 each. Subsequently shares in it were issued to the persons who had clubbed together to find the purchase price paid for the land, whereupon they became members of the company.

Some members of the company were dissatisfied with its administration. Their allegation is this. They say that the original idea was that after purchase the land was to be sub-divided among the purchasers and each sitting tenant was to get a separate title to the portion occupied by him. The four persons to whom the land was transferred in the first instance by Mrs. Brown held the land, and should have been registered only, as trustees for themselves and the other purchasers. There was no mandate by the subscribers that the plaintiff company should be formed and that the land should be transferred to it. The first time they heard about the formation of the company was when they received a notice saying that a statutory meeting of the company was to be held. That meeting was held on 20th November, 1960. Since then no meeting had been held and the motives of the seven directors, the defendants in this case, became suspect.

Most of the trouble here arose in my view out of misunderstanding. All the persons involved are uneducated and are unfamiliar with the intricacies of company law; and the vast majority of them are frugal Chinese who, I suspect, are highly suspicious of each other. None of the directors of the company who gave evidence denied that it was the intention of the company to look after the interests of the persons who had subscribed to pay the purchase price. Be that as it may, some of the subscribers feared for the safety of their money and of their interest in the land. Accordingly, on 26th April, 1961, 59 of them signed a requisition, exhibit D.2, under section 115 of the Companies Ordinance addressed to the defendant directors. This requisition complied with section 115(1). In my view it also complied with Article 60(1) which corresponds to section 115(2) as it stated the objects of the meeting requisitioned, it was signed by the requisitionists and finally it was "deposited" at the registered office of the company, having been sent there by post. It is clear from exhibit A.2, a letter dated 2nd June, 1961, written by the directors' solicitor to the solicitor of the dissatisfied group, that it is not denied that the requisition itself did comply with the law. But this letter went on to say that the directors had been advised that even if the draft resolutions mentioned in the requisition were passed at the general meeting, it would be unlawful to carry any of them into effect and that therefore the directors would not convene the extraordinary general meeting requisitioned.

Article 60(2), which corresponds to section 115(3) of the Companies Ordinance, provides that if the directors did not, within twenty-one days from the date of the requisition being so deposited, proceed to convene a meeting, the requisitionists or any of them representing more than one half of the voting rights of all of them could themselves convene the meeting. Accordingly, on 17th June, 1961, the requisitionists issued a notice P.5 stating that an extraordinary general meeting of the company would be held at a specified place on a specified day, namely, 9th July, 1961, and at a specified hour. So far this notice complied with Article 61.

But Article 61 also provides, first, that such a notice must specify the general nature of the business to be transacted at the extraordinary general meeting to be held on 9th July, 1961. Secondly, it provides that the notice shall be given to the members and it may be sent by post or it may be "otherwise served as hereinafter provided." Article 140 provides that the notice may be served upon any member, either personally or by sending it through the post in a prepaid letter, envelope or wrapper, addressed to such member at his registered place of address.

What was done in this case? As regards the first requirement of Article 61, unlike the requisition D.2, the notice P.5 did not spell out the draft resolutions to be proposed at the extraordinary general meeting. It merely stated "The business before the meeting will be to discuss and vote upon the resolutions set out in the notice of requisition". If a copy of the notice of requisition D.2 had accompanied every copy of the notice P.5, then clearly nobody can complain that the general nature of the business to be transacted at the extraordinary general meeting has not been specified, *Boschoek Proprietary Co. Ltd.* v. *Fuke.*[1] It was not suggested that a copy of D.2 accompanied P.5, and Inche' Sen for the directors (except defendant No. 5 who sided with the dissatisfied group and except for defendant No. 6, now deceased) argued that in these circumstances the notice P.5 was insufficient and therefore invalidated the subsequent meeting.

As regards the second requirement of Article 61, every effort had been made by the dissatisfied faction to serve a copy of the notice P.5 on every member of the company, see the evidence of PW.1 and PW.2. Apart from 6 or 7 members, all the members of the company live on the land. I am satisfied that every effort was made either to serve a copy on a member personally or to leave one at his home should he be out. The evidence did not say that every member was served a copy personally, as some members were out when PW.1 and PW.2 and another went round distributing it. It is not to be wondered at that every effort was made to serve copies on every member, as the dissatisfied faction was acting on legal advice.

I now come to the proceedings at the extraordinary general meeting itself. It was clear to me from reading the correspondence and from the demeanour of the witnesses in the box that there was bad blood to spare between the two opposing groups in this company. The directors deliberately refused to convene the meeting in answer to the requisition D.2. They are Chinese and must have regarded the proposal to deprive them of their office as directors as a terrible loss of face. So the leaders among the directors certainly went to the meeting determined to be as unco-operative as possible. When the meeting began, all the directors (except defendant No. 6 then already deceased) were present and the chairman of the directors, defendant No. 1, was entitled to take the chair, Article 65. I did not accept his evidence nor that of those who spoke in his favour that he was prevented from taking the chair. He was in my view one of the most difficult customers in this matter. He went to the meeting to make trouble and when he saw the mood of those present, he was unwilling to act. I believe that he left because he was certain that those present would have voted him and the other directors out of office and he was not willing to suffer this indignity. Consequently, the opening of the meeting complied with Article 65. PW.1 was unwilling to act, the other directors present did not choose a chairman and so the other members present had the right to choose one of the directors to be chairman, but no director present was willing to take the chair. So the members could choose and did choose one of their number, namely, PW.2, to be chairman.

In the event the meeting carried on and the following four resolutions were passed :—

" (1) That all Directors of the Company at the date hereof do forthwith vacate office.

(2) That in their place the following persons be appointed to be Directors of the Company:

WAH HAI TOON
LEE KUAN
NG CHOY
WOO TAK
WONG CHIN TIN [defendant No. 5].

(3) That the land at present owned by the Company at Puchong under Selangor Certificate of Title No. 13415 be forthwith transferred for a consideration of $5 to Wah Hai Toon, Lee Kuan, Ng Choy and Woo Tak as Trustees for the several persons who are Shareholders in the Company and whose names and addresses are inscribed in a document which for the purpose of identification has been subscribed by the Company's solicitors, Messrs. P. T. Wong & Co., of Lee Yan Lian Building, Mountbatten Road, Kuala Lumpur.

(4) That the Directors forthwith take all such steps as may be necessary to give effect to the proposed transfer and to secure that the proposed Transferees are duly registered as the owners of the land so transferred."

Inche' Sen contended that the resolutions were *ultra-vires*, illegal, void and of no effect. Inche' Maxwell contended that they were perfectly *intra-vires* and valid and if resolutions (1) and (2) were *ultra-vires* and void, then resolutions (3) and (4) were not.

This is not an easy matter to judge, but having given it the best consideration I can, I must hold that the meeting has not been properly convened and accordingly all the resolutions passed were void and of no effect. I so conclude for one reason and one reason only. The dissatisfied faction could have served the notice by post, but they elected to serve it on the members personally, except on the directors to all of whom copies were also sent by registered post. Because of the strenuous efforts made to serve P.5, Article 62 might have operated so that the accidental omission to give notice of the meeting or the non-receipt of the notice by any of the members would not have invalidated the meeting. But in my view of the law, Article 62 could not in the circumstances operate because the notice dealt with in it must be a proper notice, a notice which complied in every respect with Article 61, and here the notice had one fatal flaw. It did not specify the general nature of the business to be transacted at the meeting called. True it said that the business before the meeting was to discuss and vote upon the resolutions set out in the requisition, but the requisition did not accompany it, and in these circumstances how can it be said that its recipients, i.e., the recipients of P.5 (other than the persons who had signed the requisition D.2 and the directors all of whom had been sent copies of D.2 by registered post) could have known what was afoot? Unless somehow or other they had contrived to see D.2. But there is no evidence that any of them did so; PW. 1 and the other witnesses for the plaintiff did not say that any of the other members of the company (and there were 122 members all told) had been sent or shown copies of D.2.

For these reasons I would dismiss the plaintiff's claim and, allowing the counter-claim, I would declare that the resolutions passed at the extraordinary general meeting of the plaintiff company held on 9th July, 1961, were void and of no effect (it is unnecessary for me to say if they were also *ultra-vires* and illegal) and that the defendants were and are still the lawful directors of the company.

In conclusion I think it would not be out of place if I make the following observation.

There is no doubt that some members of this company who have all contributed towards the purchase price of this land desire, and passionately desire, to have sooner rather than later separate titles to their separate plots. To them the formation of this company, however desirable it might be as an interim measure, could not have been otherwise than a misfortune, because it is seldom that any move may now be made by any of them without at every turn consulting a lawyer or an accountant or a company secretary, none of whose services could be regarded as cheap by the peasantry. Already some of the members have come to Court thrice. Those who are privileged to be professionally engaged in this matter would be doing the community a service if they helped to expedite the achievement of the ultimate aspirations of these simple folks, for interminable legal wrangling, while giving the professionals engaged in it valuable practice in the art of company law, will only dissipate the resources of these unfortunates and may lead to breaches of the peace. I say this without in any way impugning the *bona fides* of the professional advisers who have so far been engaged in these disputes.

As regards costs, Inche' Sen submits that they should be paid by the solicitors of the persons who organised the opposition to the old directors while Inche' Maxwell submits that it would not be fair to whittle down the plaintiff company's assets by making it pay and in the circumstances the Court might be well advised to make no order or to reserve its decision on this until the other matter (Originating Summons No. 40 of 1962) connected with this suit comes up again before it. I order that costs shall be decided when I come to consider Originating Summons No. 40 of 1962 again.

Claim dismissed.
Counter-claim allowed.

Solicitors: *P. T. Wong & Co.; T. K. Sen & Co.*

KATCHI FATIMAH v. MOHAMED IBRAHIM

[O. C. J. (Ambrose J.) August 21, 1962]

[Singapore — Probate No. 596 of 1959]

Probate and Administration — Will — Date of execution not inserted — Wills Ordinance (Cap. 35), s.6 — Objection to distribution contrary to Muslim Law — Testator illiterate in English — Allegation of undue influence.

Muslim Law — Will — Disposition in excess of legal 1/3 — Absence of consent by heirs — Will in compliance with Wills Ordinance (Cap. 35), s.6.

In this probate action, the defendant, the eldest son of the deceased by his first wife opposed the petition for probate to the will of the deceased being granted to the plaintiff, one of the widows of the deceased. It was contended for the defendant that (1) the date of the alleged execution was not inserted in the will, (2) a Muslim cannot by will dispose of more than 1/3 of the surplus of his estate after payment of funeral expenses and debts and that testamentary dispositions in excess of the legal third cannot take effect unless the heirs consent to them after the death of the testator, (3) testamentary disposition by a Muslim to an heir are not valid unless the other heirs consent to the disposition after the death of the testator, (4) the testator did not know and fully appreciate and approve of the contents of the will and (5) execution of the will was obtained by undue influence.

Held: (1) although the attesting witnesses could not remember the exact date of execution, their testimony that the will was executed by the deceased in their presence during the month of Ramadhan 1957 was sufficient;

(2) and (3) the will was entitled to probate as section 6 of the Wills Ordinance had been complied with. The defendant and other children of the deceased must make a separate application to Court if they desire to vary the will to make provision for them in accordance with the school of law of Islam to which the deceased belonged;

(4) although the deceased could not write English and could only sign his name in English, he knew the contents of the will and approved of them;

(5) there was no evidence to substantiate the allegation of undue influence.

PROBATE ACTION.

K. E. Hilborne for the plaintiff.
N. C. Goho for the defendant.

Cur. Adv. Vult.

Ambrose J.: In this probate action, the plaintiff, who is the widow of the abovenamed deceased, prays in her petition that probate of the will of the deceased may be granted to her as executrix named in his will. The defendant, who is the deceased's eldest son by his first wife, opposes the petition on six grounds, which are set out in the defence.

The first ground is that the deceased was not domiciled in Singapore at the time of his death. This was abandoned at the trial.

The second ground is that the date of the alleged execution has not been inserted in the will. The year of the execution is stated in the will to be 1957; but the month and the day of the month have been left blank. Ahmad bin Abdul Razak and Shaik Ali, son of Nagoor Meera, the two attesting witnesses, testified that the deceased signed the will in their presence in Shaik Ali's office at No. 4B D'Almeida Street, Singapore, in the month of Ramadhan in 1957. In that year, this month began on the first day of April and ended on the last day of the same month. Both witnesses added that the time of the execution was about 2.30 p.m. I accept their evidence. In my opinion, although they could not remember the exact date, their testimony that the will was executed by the deceased in their presence during the month of Ramadhan in 1957 is sufficient.

It is convenient to consider the fifth and sixth grounds before the third and fourth. The fifth ground is that the testator did not know and fully appreciate and approve of the contents of the alleged will. The plaintiff testified that about two years before his death the deceased told her that he was going to make arrangements for her and her children, and that he would leave a will. She added that one day she told the deceased that his five sons by his first wife were grown up and could earn their own living, and that her children were all young and she asked